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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,056	12/02/2003	Ching-Song Chen	CU-3472 RJS	2627

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EXAMINER	
PATEL, VINOD D	

ART UNIT	PAPER NUMBER
3742	

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/726,056	CHEN, CHING-SONG	
	Examiner	Art Unit	
	Vinod D. Patel	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED OFFICE ACTION

INTRODUCTION

1. This application/control number 10/762056 has been examined. This is the first action on the merits of the claimed invention. The application has claims 1-8 pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US6353211) in view of Bart (US4736088).

With respect to claim 1, Chen discloses an electric heating cushion device (1) comprising: a heating member (10) in form of a flexible sheet (11) which has two end portions (13, 14) opposite to each other a longitudinal direction, and a flexible intermediate portion interposed between said end portions, said heating member including upper and lower dielectric layers (111, 112) and an electric heating film layer (113) which is disposed between said upper and lower dielectric layers and which is adapted to generate heat when supplied with electric power, said upper dielectric layer at one of said end portions being brought to a permanent interengagement with said lower dielectric layer at the other one of said end portions so as to roll said intermediate portion into a tubular body, said tubular body defining a cylindrical space therein, which extends to terminate at two open ends that are opposite to each other in a

transverse direction relative to the longitudinal direction and an electric wire (22) unit having a first end extending into said heating member and connected electrically to said electric heating film layer, and a second end opposite to said first end and adapted to be connected electrically to an electric power source as shown in the Figure 1.

With respect to claim 1 and 8, Chen does not disclose a cushion member removably inserted in the cylindrical space through one of the open ends.

Bart discloses a therapeutic heating pad (10) comprising a cushion member described as a flannel moisture pervious liner formed in a tubular configuration (62) detachably connected within the muff (column 5, lines 3-4, column 6 lines 4-6, claim 1) to provide moist heat to the body member in the muff, a fabric lamina (14) (decorative cloth having a colored pattern design with good wear qualities for durability) serves as the outer cover of the pad (10) (column 4, lines 15-18).

It would have been obvious to provide an inflatable foam cushion member as taught by Bart for an electric heating device of Chen to provide moist heat to the body member.

With respect to claim 2, Chen discloses the upper dielectric layer at said one of said end portions is heat sealed (Column 2, lines 13-16) to said lower dielectric layer at said other one of said end portions, thereby establishing the permanent inter engagement. Dielectric layer end is frequency welded to lower dielectric layer end is considered as a product by process claim. Patentability of a product-by-process claim does not depend on its method of production but is based on the product. "If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

With respect to claim 3, Chen discloses a pair of end edge caps (12) configured to sheathe open ends.

With respect to claim 4, Chen does not disclose a fabric sleeve sleeved on the tubular body between the end edge caps.

It would have been obvious to provide a fabric cover as taught by Bart for an electric heating device of Chen to provide a decorative cloth having a colored pattern design with good wear qualities for durability and to serve as the outer cover of the pad (10) (column ~~2~~ 4, lines 15-18).

With respect to claim 5, Chen discloses the upper dielectric layer at said one of said end portions is heat sealed (Column 2, lines 13-16) to said lower dielectric layer at said other one of said end portions, thereby establishing the permanent inter engagement.

With respect to claim 6, Chen discloses the electric heating device comprising a comprising a temperature regulator (23) connected electrically to the electric wire unit (22) to permit regulation of temperature of said heating member (10) (column 3, lines 2-6).

With respect to claim 7, Chen discloses the upper and lower dielectric layers formed from a glass fiber material (column 4, lines 1).

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US6353211) in view of Elliot (US6124578).

With respect to claim 1, Chen discloses an electric heating cushion device (1) comprising: a heating member (10) in form of a flexible sheet (11) which has two end portions (13, 14) opposite to each other a longitudinal direction, and a flexible intermediate portion interposed between said end portions, said heating member including upper and lower dielectric

layers (111, 112) and an electric heating film layer (113) which is disposed between said upper and lower dielectric layers and which is adapted to generate heat when supplied with electric power, said upper dielectric layer at one of said end portions being brought to a permanent interengagement with said lower dielectric layer at the other one of said end portions so as to roll said intermediate portion into a tubular body, said tubular body defining a cylindrical space therein, which extends to terminate at two open ends that are opposite to each other in a transverse direction relative to the longitudinal direction and an electric wire (22) unit having a first end extending into said heating member and connected electrically to said electric heating film layer, and a second end opposite to said first end and adapted to be connected electrically to an electric power source as shown in the Figure 1.

With respect to claim 1 and 8, Chen does not disclose a cushion member removably inserted in the cylindrical space through one of the open ends.

Elliot discloses a warmer (10) for feet, neck and lower back comprising a bladder (22) held into its Fig. 5 shape by cushion (32) shown in Figure 4 (column 3, lines 7-10) or cushion (50) shown in Figure 8 (column 4, lines 1-5) to provide therapeutic warmer for feet, the neck and lower back (column 1, lines 64-65), a cover (40) preferably formed of a fabric aesthetically covers bladder (22) and works in combination with cushion (32) to maintain the shape of the bladder especially when the bladder is placed in a generally vertical orientation. The inherent bias of foam cushion (32) and the extra support provided by cover (40) helps maintains the shape of bladder (22) and enables the bladder to conform to the shape of the person's lower back area. The combination of foam cushion (32) and cover (40) prevents the water or other liquid fluid within the bladder from falling to the bottom of the bladder and distorting its shape. In other

words, foam cushion (32) and cover (40) maintain the shape of bladder (22) regardless of the orientation of bladder (22) column 3, lines 58-67).

It would have been obvious to provide a inflatable foam cushion member as taught by Elliot for an electric heating device of Chen to provide comfort of the user since foam cushion enables it to conform to the curvature of the head and neck (column 3, lines 49-51),

With respect to claim 2, Chen discloses the upper dielectric layer at said one of said end portions is heat sealed (Column 2, lines 13-16) to said lower dielectric layer at said other one of said end portions, thereby establishing the permanent inter engagement. Dielectric layer end is frequency welded to lower dielectric layer end is considered as a product by process claim. Patentability of a product-by-process claim does not depend on its method of production but is based on the product. "If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

With respect to claim 3, Chen discloses a pair of end edge caps (12) configured to sheathe open ends.

With respect to claim 4, Chen does not disclose a fabric sleeve sleeved on the tubular body between the end edge caps.

It would have been obvious to provide a fabric cover as taught by Elliot for an electric heating device of Chen to provide comfort of the user since foam cushion enables it to conform to the curvature of the head and neck (column 3, lines 49-51).

With respect to claim 5, Chen discloses the upper dielectric layer at said one of said end portions is heat sealed (Column 2, lines 13-16) to said lower dielectric layer at said other one of said end portions, thereby establishing the permanent inter engagement.

With respect to claim 6, Chen discloses the electric heating device comprising a comprising a temperature regulator (23) connected electrically to the electric wire unit (22) to permit regulation of temperature of said heating member (10) (column 3, lines 2-6).

With respect to claim 7, Chen discloses the upper and lower dielectric layers formed from a glass fiber material (column 4, lines 1).

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The art should be both separately considered and considered in conjunction with the previously cited art when responding to this action. McDonald (US2032294) relates to an electric hand pad, Chadner (US3103219) relates to sleep inducing heating pad, Reuter (US4060710) relates to rigid electric surface heating element, Anderson (US4628188) relates to an electric heating pad for seats and back rests, Siarkowski (US6073998) relates to seat warmer), Johansson (US5928548) relates to an electric cushion heater, Young (US3480760) discloses an electrically heated pillow, Hyatt (US6329644) relates to thermal retention device, Seto (US4868898) discloses an electrically heated portable seat, Scher (US4107509) relates to an apparatus for treating body members with heat and moisture, (WO 02/087284 A1) relates to dual density heated deformable support.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is 571-272-4785. The examiner can normally be reached on 7.30 A.M. TO 4.00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VP

Vinod Patel 5/2/05
Vinod Patel
Patent Examiner
Art Unit 3742

Robin O. Evans
ROBIN O. EVANS
PRIMARY EXAMINER
5/4/05